1 2	KAMALA D. HARRIS Attorney General of California KAREN B. CHAPPELLE	
3	Supervising Deputy Attorney General NANCY A. KAISER	
4	Deputy Attorney General State Bar No. 192083	
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013	
6	Telephone: (213) 897-5794 Facsimile: (213) 897-2804	
7	Attorneys for Complainant	
8		,
9	BEFORE THE	
10	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS	
11	STATE OF CALIFORNIA	
12		
13	In the Matter of the Accusation Against:	Case No. 2013-260
14 15	MICHELLE ELAINE SCHUSTER, AKA MICHELLE ELAINE KIRCHMEIER 3202 Margate Place	ACCUSATION
16	Palmdale, CA 91355	
17	Registered Nurse License No. 476171	
18	Respondent.	,
19		.
20	Complainant alleges:	
21	PARTIES	
22	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her	
23	official capacity as the Executive Officer of the Board of Registered Nursing.	
24	2. On or about March 31, 1992, the Board of Registered Nursing issued Registered	
25	Nurse License Number 476171 to Michelle Elaine Schuster, aka Michelle Elaine Kirchmeier	
26	(Respondent). The Registered Nurse License was in full force and effect at all times relevant to	
27	the charges brought herein and will expire on April 30, 2014, unless renewed.	
28	///	
40		1
		1

Accusation

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

- 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.
 - 6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct..."
- 7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license."

COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCE

9. Xanax, a brand name for alprazolam, is an anti-anxiety benzodiazepine and is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1), and is categorized as a dangerous drug pursuant to Code section 4022, subdivision (c).

FACTUAL SUMMARY

- Orthopedics at Antelope Valley Hospital, located in Lancaster, California (the hospital), Respondent's coworkers observed that Respondent appeared to be impaired. The Nursing Director of the hospital's Medical-Surgical Services observed that Respondent's speech was slurred and she seemed to be slightly disoriented during the charge nurse bed meeting at 0800. At approximately 1030, a staff nurse called the Nursing Director to the unit. The staff nurse reported that she felt that Respondent was "off." The staff nurse needed help programming a medication pump for her patient who was slated to be discharged. The staff nurse did not have any experience with the medication pump and indicated that she did not feel safe with Respondent as charge nurse, nor did she feel safe having Respondent help her program the medication pump. The Nursing Director stood in the medication room and observed Respondent. She appeared to be very impaired, overly excited and her speech was audibly slurred and almost unintelligible. She was inappropriately hugging a doctor in the nurse's station full of staff members and visitors in the hallway. She yelled out with slurred speech, "NO, NO, NO".
- 11. Another staff nurse showed the Nursing Director a medication order that Respondent transcribed incorrectly. She misspelled the medication Oxycontin and instead, wrote "Oxycontinue 10mg q12 hours Routine". There is no such medication of Oxycontinue. She also

wrote "Keflex 500mg PO QID AM", an order that does not make sense and could cause confusion and a potential medication error. This order was also written on the intravenous (IV) medication administration record instead of the oral (P.O.) medication administration record.

- 12. At approximately 1100, the hospital's Vice President of Nursing met with the Nursing Director and Respondent. Respondent was asked whether she wanted to share anything. She said that she was having a "rough go of it" because her fiancée was recently killed by a drunk driver and that she had trouble sleeping. She stated that she took a "Benadryl" at 0300. When asked whether she had taken any other medication, she responded "No", "just a Benadryl".
- 13. Because her supervisors had serious concerns that Respondent was not fit for duty, at 12 noon she was escorted to the hospital's employee health department for a drug test.

 Respondent tested positive for Xanax. Respondent provided her supervisors a copy of the prescription. On or about February 9, 2011, Respondent was placed on administrative leave from the hospital, and subsequently, resigned in lieu of termination.

FIRST CAUSE FOR DISCIPLINE

(Use of Controlled Substance)

14. Respondent is subject to disciplinary action under Code section 2762, subdivision (b), on the grounds of unprofessional conduct, in that on or about February 9, 2011, Respondent used a controlled substance, specifically, Xanax, to the extent that such use impaired her ability to conduct with safety to the public the practice authorized by her license. Complainant refers to and incorporates all the allegations contained in paragraphs 10 - 13, as though set forth fully.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

15. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), in that on or about February 9, 2011, Respondent engaged in unprofessional conduct.

Complainant refers to and incorporates all the allegations contained in paragraphs 10 - 14, as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Registered Nurse License Number 476171, issued to Michelle Elaine Schuster, aka Michelle Elaine Kirchmeier;
- 2. Ordering Michelle Elaine Schuster to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: OCTOBER 10, 2012

LOUISE R. BAILEY, M.ED., RN

Executive Officer

Board of Registered Nursing

State of California

Complainant

LA2012506719 51107294.doc